



## CENTER FOR FOOD SAFETY

May 14, 2021

### SUBMITTED VIA ONLINE SUBMISSION FORM

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

### RE: Freedom of Information Act Request

To the U.S. Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit, public interest and environmental advocacy organization that works to address the adverse health and environmental impacts of our industrial food system, while at the same time advocating for a more sustainable future for our food. CFS has a long history of promoting sustainable farming practices and advocating and litigating for the ban of toxic pesticides. Consistent with this mission and pursuant to 40 C.F.R. § 2.107(l)(2)(i) and the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully requests the following information:

**All records, from January 1, 2001 to present, used to document EPA's regulation of the export of unregistered pesticides from the United States to foreign purchasers for use in other countries pursuant to section 17 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136o(a)(2), and EPA's accompanying regulations, 40 C.F.R. §§ 168.70, 168.75, and 168.85, including:**

1. All foreign purchaser acknowledgment statement (FPAS) submissions to the EPA by U.S. exporters for unregistered pesticides;<sup>1</sup>

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<sup>1</sup> See <https://www.epa.gov/pesticides/importing-and-exporting-pesticides#import>.



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2. All documents related to the U.S. export of an unregistered pesticide submitted by EPA to notify the Designated National Authority of the importing country;<sup>2</sup>
3. All records and permit inspections of those records of exporters of unregistered pesticides in EPA's possession, *see* 40 C.F.R. § 168.85(a); and
4. All annual reports submitted to EPA by exporters of unregistered pesticides as required by 40 C.F.R. § 168.85(b).

"All records" includes all communications, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, and notes related to the specific documents listed at (1)-(4) above. This request includes all documents that have ever been within your custody or control, whether produced by you or by any others, and includes all current and former working, investigative, retired, electronic, and/or other files.

This request is being sent to the EPA FOIA Officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

### REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2)(i), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(2)(i).

In determining whether the fee waiver criteria is satisfied, CFS respectfully reminds the EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) ("[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information."). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

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<sup>2</sup> *Id.*



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The factors EPA must consider in deciding a fee waiver request are laid out in 40 C.F.R. § 2.107(l)(2)(i) and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (4) Whether the contribution to public understanding is significant.

40 C.F.R. § 2.107(l)(2)(i).

**I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

**A. The subject of the disclosure concerns “the operations and activities of the government.”**

The requested information pertains to the EPA’s regulatory authority and oversight of U.S. chemical corporations’ exports of pesticides to other countries that are not approved—or registered—for use in the United States under FIFRA. Many of these pesticides have been banned domestically in the United States due to their known detrimental health impacts. Under section 17 of FIFRA, 7 U.S.C. § 136o, EPA is charged with regulating the import and export pesticide products and devices, including the export of unregistered pesticides. *See* 7 U.S.C. § 136o(a)(2); 40 C.F.R. §§ 168.70, 168.75. Unregistered pesticides under FIFRA section 17 are defined as pesticides intended solely for export that are not required to be registered in the U.S. It is irrefutable that EPA’s regulation and oversight of the exportation of unregistered pesticides from U.S. manufactures is a clearly identifiable operation of the government. The information sought by CFS reflects an interest in supporting its mission to ensure the safety of pesticides and is of the utmost concern to the public. This disclosure will demonstrate to the public at large the nature of

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EPA's regulation of pesticides domestically banned in the U.S. that are exported to other countries by U.S. chemical companies.

**B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.**

As discussed in the previous section, the present disclosure will provide the public with a better understanding of EPA's regulatory process for U.S. chemical companies to export unregistered pesticides to foreign purchasers in other countries. Simultaneously, disclosure of the requested information will aid CFS in fulfilling its function of public oversight of government action. Public oversight of agency action, specifically, is a vital component in our democratic system and is the bedrock upon which FOIA stands.

**C. CFS is highly qualified to analyze the requested information, and also aptly positioned to disseminate it to the public.**

CFS is a tax-exempt, nonprofit membership organization founded with offices in San Francisco, California; Portland, Oregon; and Washington, D.C. CFS represents more than 975,000 farmer and consumer members, in every state throughout the country. Since its inception in 1997, CFS's mission has been to empower people, support farmers, and protect the environment from the harmful impacts of industrial agriculture. Every day CFS staff works to address the adverse health and environmental impacts of our industrial food system, while at the same time advocating for a more sustainable future for our food. When we think of “food safety” we mean it in a broad sense: food that is safe for people, but also safe for the planet and workers. Accordingly, CFS's program activities cover the gamut of all aspects of the food and agriculture system including but not limited to: foodborne illness; truth in food labeling; ocean aquaculture and fisheries issue; livestock pollution; soil protection; industrial monocultures; new and emerging food technologies; and many more. A cornerstone of this mission is to advocate for thorough, science-based safety assessments of agricultural products and technologies. As part of its broader mission one of CFS's flagship programs has always been addressing the adverse environmental, health, and socioeconomic impacts of pesticides. CFS has multiple staff—scientific, policy, and legal—that work on this program. Due to the nature of CFS's organizational activities, it frequently employs FOIA's provisions in record requests to EPA to monitor EPA's decision-making with regards to its regulatory authority over pesticide use under FIFRA, and to open the operations and activities of EPA to public scrutiny and contribute significantly to the public's understanding of the agency's actions as it relates to pesticides. Consequently, CFS is highly qualified to fully comprehend, analyze, and organize the requested records.

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In addition, CFS combines multiple tools and strategies in pursuing its mission, including public and policymaker education, outreach, and campaigning. For example, CFS disseminates a wide array of informational materials to government agencies, lawmakers, nonprofits, and the general public regarding the effects of industrial food production, agricultural products, and pesticides, on human health and the environment. These educational and informational materials include, but are not limited to, news articles, policy reports, white papers, legal briefs, press releases, newsletters, product guides, action alerts, fact sheets, and our website. CFS often has provided expert testimony to policymakers on the issues including the adverse impacts and risks of pesticides. Staff members regularly monitor the Federal Register and submit comments to EPA and other regulatory agencies via the public notice-and-comment process. CFS also regularly sends out action alerts to its members, encouraging them to participate in the notice-and-comment process, or to submit letters to government officials related to the oversight of industrial agriculture, pesticide use, genetically engineered crops, and other issues affecting CFS's mission to build a sustainable food system. When necessary, CFS also engages in public interest litigation to address the impacts of industrial food production and pesticides on its members, the environment, and the public interest. Accordingly, CFS is an effective vehicle to disseminate information to the general public about EPA's oversight and regulation of U.S. exports of unregistered pesticides to foreign purchasers for use in other countries under section 17 of FIFRA.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the "reasonably broad audience" factor. *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. See *W. Watersheds Project v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004). CFS's activity in these respects far outstrips any minimums established by judicial interpretation.

## II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO CENTER FOR FOOD SAFETY.

As noted, CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our industrial food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See, e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. Specifically, in no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public about the EPA's oversight and regulatory authority of exports of unregistered pesticides under FIFRA section 17.

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Upon request and free of charge, CFS will provide members of the public with relevant information obtained from the agency.

Based upon the foregoing, CFS requests that this FOIA be classified within EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document that may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to [tyundt@centerforfoodsafety.org](mailto:tyundt@centerforfoodsafety.org). Electronic materials are preferred but if records must be mailed, please send to the 303 Sacramento Street, 2nd Floor San Francisco, CA 94111. Please email me at [tyundt@centerforfoodsafety.org](mailto:tyundt@centerforfoodsafety.org) or call me at 415-826-2770 or 541-419-2344 if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ Victoria Yundt

Victoria Yundt

Staff Attorney

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